

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

IMPSAT USA, INC.

Petition for Modification of Authorization and
Certificate to Remove Settlement Rate
Condition for Provision of Facilities-based Services
between the United States and Italy

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File No. ISP-PDR-19980715-00010

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ORDER

Adopted: March 1, 1999

Released: March 3, 1999

By the Chief, Telecommunications Division:

A. The above-captioned petition filed by IMPSAT USA, Inc. (IMPSAT) requests that the Commission remove the settlement rate condition from its authorization, pursuant to Section 214 of the Communications Act of 1934, to provide facilities-based services between the United States and Italy.¹ This petition was placed on public notice on November 4, 1998. No comments were received.

2. At the time of the International Bureau's order granting IMPSAT's authorization, Societa Finanziaria Telefonica PA (STET), Italy's incumbent provider of telecommunications, held a 25 percent ownership interest in IMPSAT. The Bureau's order required that IMPSAT maintain with STET a settlement rate that is within the Commission's current and future benchmark settlement rates for the U.S.-Italy route.² The Bureau imposed the condition because of the concern that STET could use the subsidy

¹IMPSAT USA, Inc., File Nos. ITC-95-434 and ITC-95-485, DA 97-1185 (Intl. Bur. rel. June 5, 1997) (*Order*).

²*See Order* ¶ 16. In imposing this condition, the Bureau cited Regulation of International Accounting Rates, CC Docket No. 90-337, Phase II, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 7 FCC Rcd 8040 (1992), which first adopted benchmark settlement rates for U.S. carriers; and International Settlement Rates, IB Docket No. 96-261, *Notice of Proposed Rulemaking*, 12 FCC Rcd 6184 (1996), which proposed new benchmark rates. Subsequent to the Bureau's order, the Commission adopted the proposed new benchmark rates in its *Report and Order* and made them binding on U.S. carriers after specified transition periods. *See* 12 FCC Rcd 19,806 (1997), *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, No. 97-1612 (D.C. Cir. Jan. 12, 1999) (*Benchmarks Order*). The *Benchmarks Order* also adopted a general rule that requires foreign-affiliated U.S. carriers to comply immediately with the benchmark settlement rates on the affiliated route as a condition of providing facilities-based service on that route. *See Benchmarks Order* ¶ 231. This rule has not, by its terms, applied to IMPSAT at any time because, as the Bureau found in its order, the STET investment did not rise to the level of an affiliation within the meaning of the Commission's rules. *See Order* ¶ 12.

embedded in Italy's above-cost settlement rate to subsidize the operations of IMPSAT on the U.S.-Italy route.³ In its petition to modify its Section 214 authorization, IMPSAT states that STET no longer holds any interest in IMPSAT. Therefore, IMPSAT requests that the settlement rate condition be removed. We agree that, because STET no longer has an ownership interest in IMPSAT, the predicate for the condition no longer exists and IMPSAT should be permitted to provide service on the U.S.-Italy route on the same basis as other carriers. We also note that STET's settlement rate with U.S. carriers is below the current relevant benchmark rate adopted in the Commission's *Benchmarks Order*.⁴

3. Upon consideration of the petition and in view of the foregoing, we conclude that removal of the condition requested by IMPSAT will serve the public interest, convenience and necessity.

4. Accordingly, IT IS ORDERED that the petition, File No. ISP-PDR-19980715-00010 IS GRANTED, and the settlement rate condition in paragraph 24 of the Bureau's Order cited above is hereby removed.

5. IT IS FURTHER ORDERED that all other terms and conditions of the Bureau's Order remain the same.

7. This Order is issued under Section 0.261 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

³See *Order* ¶ 16.

⁴See MCI Telecommunications Corporation, File No. ITC-214-19980805-000541, DA 98-1891 (Tel. Div. rel. Sept. 21, 1998).